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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,476	08/04/2003	Oscar Pupo	23054	5160
7590	02/04/2004		EXAMINER	
Sanchelima and Associates, P. A. Jesus Sanchelima, Esq. 235 S.W. Le Jeune Rd. Miami, FL 33134			GUTMAN, HILARY L	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 02/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/633,476	Applicant(s) PUPO, OSCAR
Examiner Hilary Gutman	Art Unit 3612	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is FINAL.                    2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-9 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 04 August 2003 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the filler material of claims 5 and 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The disclosure is objected to because of the following informalities: on page 2, line 3, “comprising” should be “comprises”. On page 4, line 2, “such as” should be inserted before “wind” and on line 3, “such” should be deleted. On page 6, “wind, such rain” should be “such as wind, rain”. On page 8, line 11, “as” should be inserted after “such”.

Appropriate correction is required.

3. The abstract of the disclosure is objected to because on line 3, “is provided” should be inserted after “vehicles”. Correction is required. See MPEP § 608.01(b).

### *Claim Objections*

4. Claims 1 and 7 are objected to because of the following informalities:

In claims 1 and 7, line 10, “a rooftop” should be “the rooftop”.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to all the claims, the recited limitation of a “jeep-type vehicle” is indefinite since it is unclear what vehicles can be considered “jeep-type”. Furthermore, the term “jeep” is defined as “a small general-purpose motor vehicle with 80-inch wheelbase, ¼ ton capacity, and four-wheel drive used by the US army in World War II” (Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> edition) but other vehicles no matching this description can apparently be considered “jeep-type” and perhaps this phrase should be further defined in the specification and/or further recited in the claims to show what vehicles can be grouped and encompassed in the “jeep-type” vehicle category or perhaps the phrase should be deleted altogether. For the purposes of examination, this phrase will be taken to mean any motor vehicle having four wheels and exhibiting the characteristics or capable of exhibiting the characteristics of a jeep including large capacity and four wheel drive.

***Double Patenting***

7. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 2, 4, and 6 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 7, 8, and 9, respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Saunders.

Saunders (4,805,956) discloses a rooftop used in combination with a jeep-type vehicle, comprising: a substantially rectangular top wall 14 having first, second, third, and fourth ends, the first and second ends parallel and equally spaced apart from each other by the third and fourth ends (Figure 1), the first end removably secured to a windshield frame of a jeep-type vehicle, the substantially rectangular top wall also having first and second elongated wedges 30; and first and second side walls 16 extending substantially perpendicularly from the third and fourth ends to form the rooftop for the jeep-type vehicle, the first and second side walls terminating at first and second bases, integral therewith, respectfully and mount upon the jeep-

type vehicle, the rooftop only covering a driver and front passenger cabin of the jeep-type vehicle. The rooftop is made of a hard, lightweight, weatherproof plastic material.

With regard to claims 2 and 7, the first and second elongated wedges 30 extend from the first end to the first and second bases and cooperate to receive door window frames (not shown) of the vehicle when the door window frames are in a closed position.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe et al. in view of Saunders.

Monroe et al. (4,238,876) teach a rooftop used in combination with a jeep-type vehicle, comprising: a substantially rectangular top wall 20 having first, second, third, and fourth ends, the first and second ends parallel and equally spaced apart from each other by the third and fourth ends, the first end removably secured to a windshield frame of the jeep-type vehicle, and first and second side walls (Figure 1) extending substantially perpendicularly from the third and fourth ends to form the rooftop for the jeep-type vehicle, the first and second side walls terminating at first and second bases at the lower ends of the side walls respectfully and mount upon the jeep-type vehicle, the rooftop only covering a driver and front passenger cabin of the jeep-type vehicle.

With regard to claim 3, the substantially rectangular top wall (Figure 11) is a double-walled structure with a cavity. The top wall has an upper wall and a lower wall. The lower wall can be considered a support wall to define a reinforced area of the top wall for structural integrity.

With regard to claim 5, the rooftop is filled with a filler material 80 (Figure 11). The filler material is made of foam and is capable of reducing ultra violet radiation and exterior noise within the driver and front passenger cabin of the vehicle.

Monroe et al. lack the substantially rectangular top wall also having first and second elongated wedges and further lack the first and second elongated wedges extending from the first end to the first and second bases and cooperating to receive door window frames of the vehicle when the door window frames are in a closed position.

Saunders (4,805,956) teaches a rooftop used in combination with a jeep-type vehicle, comprising: a substantially rectangular top wall 14 having first, second, third, and fourth ends, the first and second ends parallel and equally spaced apart from each other by the third and fourth ends (Figure 1), the first end removably secured to a windshield frame of a jeep-type vehicle, the substantially rectangular top wall also having first and second elongated wedges 30; and first and second side walls 16 extending substantially perpendicularly from the third and fourth ends to form the rooftop for the jeep-type vehicle, the first and second side walls terminating at first and second bases, integral therewith, respectfully and mount upon the jeep-type vehicle, the rooftop only covering a driver and front passenger cabin of the jeep-type vehicle. Additionally, the first and second elongated wedges 30 extend from the first end to the

first and second bases and cooperate to receive door window frames (not shown) of the vehicle when the door window frames are in a closed position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided first and second elongated wedges of the type taught by Saunders upon the top wall of Monroe et al. in order to allow the top wall to be closely engaged to the window door frames of the vehicle when closed to create a tighter fit (for sealing purposes) and enhance the aesthetics or looks of the vehicle.

13. Claims 4-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe et al., as modified, and applied to claims 3 and 7 above and further in view of Litwicki.

Monroe et al., as modified, lack the top wall having a sunroof assembly built within the support wall, wherein the sunroof assembly, at a first predetermined distance from the first end, extending towards the second end without reaching the second end.

Litwicki teaches a plastic double-walled rooftop for a vehicle having a top wall with first, second, third, and fourth ends; the first and second ends parallel and equally spaced apart from each other by the third and fourth ends; the first end removably secured to a windshield frame 44 of the vehicle. The top wall has an upper part and a lower part acting as a support wall (best seen in cross section in Figure 8). The top wall has a sunroof assembly 36 (Figures 7-8) built within the support wall, generally in the center thereof; the sunroof assembly, at a first predetermined distance from the first end, extending towards the second end without reaching the second end (Figure 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a sunroof assembly as taught by Litwicki, within the support wall of Monroe et al., as modified, in order to expose the area above the cabin.

14. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe et al., as twice modified, and applied to claims 5 and 8 above and further in view of Saunders. Monroe et al., as twice modified, lack the material of the rooftop.

Saunders teaches a rooftop made of a hard, lightweight, weatherproof plastic material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the rooftop of Monroe et al., as twice modified, to be hard, lightweight, plastic as taught by Saunders in order to provide a rooftop that is hard and lightweight since these features are desirable for vehicle body components and panels.

### *Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

**17. Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label  
“PROPOSED” or “DRAFT”).

*Nailey Justice  
Humphrey, Orman  
8612  
11/16/07*